

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3 Gold Water Trading Corporation, a Nevada  
4 corporation,

5                   Plaintiff

6 v.

7 Jinro America, Inc., a Washington  
8 corporation, et al.,

8                   Defendants

Case No.: 2:18-cv-0257-JAD-VCF

**Order Dismissing Action**

[ECF Nos. 55, 57, 61]

9           Plaintiff Gold Water Trading Corporation sues Jinro America, Inc. and Wang Globalnet  
10 over an alleged franchise agreement.<sup>1</sup> With defense summary-judgment motions pending, Gold  
11 Water moves to voluntarily dismiss its claims without prejudice.<sup>2</sup> Defendants Jinro and Wang  
12 Globalnet oppose the motion in part, asking for a with-prejudice dismissal and an award of  
13 costs.<sup>3</sup>

14           Rule 41(a)(2) of the Federal Rules of Civil Procedure authorizes the court to dismiss an  
15 action “at the plaintiff’s request . . . on terms that the court considers proper.”<sup>4</sup> The Ninth Circuit  
16 has stated that “[a] district court should grant a motion for voluntary dismissal under Rule  
17 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result.”<sup>5</sup>  
18 Legal prejudice means “prejudice to some legal interest, some legal claim, some legal  
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21 <sup>1</sup> ECF No. 36 (second amended complaint).

22 <sup>2</sup> ECF No. 61.

23 <sup>3</sup> ECF No. 63 (Jinro’s opposition); ECF No. 64 (Wang’s non-substantive joinder).

<sup>4</sup> Fed. R. Civ. P. 41(a)(2).

<sup>5</sup> *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001).

1 argument.”<sup>6</sup> Uncertainty about the issues that remains after a dismissal without prejudice, the  
2 specter of future litigation, or the fact that the defendants have “incurred substantial expense in  
3 litigating the present lawsuit” are not legal prejudice.<sup>7</sup>

4 Defendants have not demonstrated that they will suffer legal prejudice if this suit is  
5 dismissed without prejudice. Though they point out that they “engaged in considerable  
6 discovery” and filed extensive motions for summary judgment before plaintiff sought dismissal,<sup>8</sup>  
7 they have not shown that this work could not be used in future litigation. The record thus does  
8 not support a finding of legal prejudice.

9 Although the court has discretion to condition this without-prejudice dismissal on the  
10 payment of costs,<sup>9</sup> the court does not find cause to do so here. This case is just a year old, the  
11 docket reflects that the issues have been actively litigated on their merits, and there has been  
12 little delay. The court also reminds defendants that, in the event that the plaintiff refiles its  
13 claims, FRCP 41(d) allows the court in that future action to “order the plaintiff to pay all or part  
14 of the costs” of this action and may stay that future case “until the plaintiff has complied.”<sup>10</sup>

15 Accordingly, with good cause appearing and no reason to delay, IT IS HEREBY  
16 ORDERED, ADJUDGED and DECREED that plaintiff’s Motion for Voluntary Dismissal [ECF  
17 No. 61] is **GRANTED; this action is DISMISSED without prejudice.**

18 IT IS FURTHER ORDERED THAT all other pending motions [ECF Nos. 55, 57] are  
19 **DENIED** without prejudice as moot.

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21 <sup>6</sup> *Id.*

22 <sup>7</sup> *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996).

23 <sup>8</sup> ECF No. 63 at 2.

<sup>9</sup> *Stevedoring Servs. of Am. v. Armilla Int’l B.V.*, 889 F.2d 919, 922 (9th Cir. 1989).

<sup>10</sup> Fed R. Civ. P. 41(d).

1 The Clerk of Court is directed to CLOSE THIS CASE.

2 Dated: March 7, 2019

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5 U.S. District Judge Jennifer A. Dorsey  
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